

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1670

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1670, entitled "A Bill for an Act Relating to the Ingenuity Charter."

The purpose of this bill is to establish the Ingenuity Company, a private, for-profit, non-stock, limited liability company chartered by the State, authorized to hold and leverage intellectual property.

This bill is objectionable for a number of reasons. First, this bill appropriates public funds to a private, for-profit company but does so absent standards required by Section 4 of Article VII of the State Constitution that prohibits State appropriations for private purposes.

Second, while its title refers to ingenuity, it is unclear how the bill assists inventors or attracts them to Hawaii. The benefits to the inventor members who grant their intellectual property rights to the company appear to be minimal. The inventor must license their invention to the company under contract. But the bill fails to describe any rights the inventor members receive in return, other than royalties. In that respect, they receive no profits beyond royalties. The bill states that financial rewards of ingenuity are meant to be distributed to others, not to the actual inventors. The remaining portion of generated income from their invention would be distributed to the other members as fees or

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as distributed profits, of which the inventor member does not share. The members who receive all profits are designated private organizations that are not part of the inventors' work. In addition, the inventor members have no guaranteed voting rights in the company.

Under the bill, all assets of this company would be distributed to the private organization members upon dissolution. Rights to the original licenses, remaining funds, and all other assets are neither returned to the inventor members nor to the State. In turn, the private organization members would not be subject to any State oversight and, thus, there would be no accountability for the manner in which these public funds are used. This bill appears to create a vehicle to appropriate public money for private organizations without public accountability.

Third, the bill creates ambiguities and contradictions that are difficult to resolve. Though the company is created by State charter, it is not a government instrumentality. This makes it look as though the company is actually just a conventional private company receiving preferential treatment from the State. The Attorney General believes this unequal treatment may subject this bill to a constitutional challenge under the Equal Protection Clause.

Further, the tension in the bill between creating a State charter, but maintaining the entity as a private, for-profit company, makes unclear the State's authority and legal responsibilities with respect to the Ingenuity Company. On the one hand, there is no attachment to or oversight by a governmental department. On the other hand, a degree of

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governmental control is interjected in the bill. This degree of control could render the State legally responsible for the acts of this private company.

To further confuse the rights and obligations of this company, the bill states that the Ingenuity Company is both a "body corporate" and a limited liability company, as defined under chapter 428, Hawaii Revised Statutes. The bill seems to create a hybrid entity with unusual provisions, such as authorizing parties who are not members or managers of the company, to control the voting rights of members. In other words, those who manage the company may vote if and only if third-parties to the company permit these managing members to vote. This creates oversight control by third-parties without imposing any fiduciary responsibility or accountability.

The Ingenuity Company also takes on characteristics of a corporation, rather than a limited liability company. If the company were directed to register as a business in Hawaii as a private company in its current formation, the company would not be able to register due to the ambiguity of its business structure.

It is imperative that we transform Hawaii's economy. Encouraging ingenuity and rewarding innovators who take risks are central to that transformation. This bill does neither. Instead, it transfers the benefits of our inventors' hard work to designated private organizations. Equally important is the care we take in using our resources to be sure that we do not waste them on underdeveloped or impractical solutions. It does a disservice to promote and pass a bill that supports innovation in name only. It is unclear how this bill in its current

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incarnation attracts inventors to Hawaii or assists them in their innovation.

For the foregoing reasons, I am returning House Bill No. 1670 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", is written over the printed name.

LINDA LINGLE
Governor of Hawaii